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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DEDRICK BROWN,

Defendant and Appellant.

B269305

(Los Angeles County  
Super. Ct. No. BA422493)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Edmund W. Clarke, Jr., Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Lance E. Winters, Senior Assistant Attorney General,  
Scott A. Taryle and Nicholas J. Webster, Deputy Attorneys General, for  
Plaintiff and Respondent.

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Dedrick Brown, convicted of robbery and of multiple sexual offenses against several victims, appeals his conviction and sentence. He argues that the admission of prior uncharged acts of sexual violence was unconstitutional and violated Evidence Code section 352. Additionally, he argues that the court erred at sentencing. We order the abstract of judgment to be amended but otherwise affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Dedrick Brown was charged with crimes against four victims. In count 1, involving M.Y., he was charged with sodomy by use of force (Pen. Code,<sup>1</sup> § 286, subd. (c)(2)(A)) in 2013. Counts 2 through 4 pertained to L.T.: forcible oral copulation (§ 288a, subd. (c)(2)(A)); forcible rape (§ 261, subd. (a)(2)); and robbery (§ 211), all in 2014. In count 6,<sup>2</sup> Brown was charged with forcibly raping C.D. in 2013; and in counts 7 and 8 he was charged with forcible rape and forcible oral copulation of Britney C. in 2010. He was also alleged to have two prior strike convictions falling within the scope of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

Prior to trial the prosecution requested that evidence of a prior uncharged incident of sexual assault be admitted under Evidence Code section 1108. The evidence concerned a 1993 incident in which Brown entered Susan P.’s apartment, forced her into her bedroom closet, touched her breast and genitals, and lay on top of her while removing his pants, stopping when her screams caused others to respond. Brown objected that the evidence of the uncharged acts was more prejudicial than probative under Evidence Code section 352. The court found the evidence more probative than prejudicial and admitted the evidence.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

<sup>2</sup> The information did not include a count 5.

A. M.Y. (Count 1)

At trial, M.Y. testified that she met Brown through a social dating site and that they agreed to meet for a date in October 2013. Instead of driving to their agreed destination, Brown drove into the hills and parked in a dark area. Brown attempted to coax M.Y. into the back seat of the car, and she asked him to take her home. When she prepared to leave and reached for her purse, Brown grabbed M.Y. by the hair and dragged her into the back seat. He hit her in the mouth and threatened her with a knife. Brown told M.Y. that if she wanted to make it home alive, she should give him what he wanted. Brown instructed her to take off her lower clothing, and he then penetrated her anus with his penis. Afterwards, he apologized, told her that he would have been faithful to her if she had given him a chance, and drove her home. M.Y. underwent a sexual assault examination, during which the nurse examined her injured lip, detected and filmed a laceration of her anus, and swabbed her anal tissues for DNA analysis. The DNA profile on the anal swab matched Brown's DNA profile.

B. L.T. (Counts 2-4)

L.T. entered Brown's car in March 2014 while she was working as a prostitute. Although L.T. expected they would go to a motel, Brown drove down a back street into an alley. L.T. protested, but Brown parked his car so close to a gate that she could not open the passenger door. Brown pulled L.T.'s hair, put his body weight on her, and held a knife to her neck. He told her to do what he wanted her to do if she wanted to see her son again. L.T. tried to reach a phone in her boot, but Brown noticed her movement and told her to drop it. He saw a second phone in her pocket and took it from her. L.T. had a third phone with her, but it slipped out and fell between the car seats. Brown told L.T. to get into the back seat of the car and joined her there. She complied with his instructions to pull down her pants and to orally copulate him. Brown placed his penis in her vagina, and he also sucked her breasts. Afterwards, Brown dragged L.T. from the car by her legs and drove off.

L.T. underwent a sexual assault examination. The DNA profile obtained from a vaginal swab matched Brown's DNA profile.

L.T. identified Brown's car at trial, and also identified phones recovered from Brown's home as resembling her lost phones.

C. C.D. (Count 6)

C.D. testified that in April 2014, when she was 17 years old, she had an argument with her mother and left home. She did not take a purse or a cell phone, and just walked around. Brown approached her in his car, and she asked if she could use his phone. C.D. called her grandmother, and Brown agreed to drive C.D. to her grandmother's home. Brown drove to a liquor store and then took C.D. to his apartment, saying that he needed to charge his phone. At the apartment, Brown gave C.D. an alcoholic drink and they smoked marijuana. C.D. could see that her mother and grandmother were calling Brown, but Brown turned his phone over and ignored the calls. C.D. panicked and said she wanted to go home. She tried to leave the apartment, but Brown grabbed her by the shoulders and threatened to kill her if she made enough noise to be heard by others. As C.D. cried, Brown placed her on the couch, pulled down her pants, and placed his penis in her vagina.

Afterwards, C.D. and Brown left the apartment. C.D. testified that she told a woman in the building's elevator that Brown had raped her and that she (C.D.) wanted to go with the woman. Brown told the woman that C.D. was crazy and not to listen to her, but the woman took C.D. to her apartment and called the police.

The woman C.D. asked for help, Stephanie Briones, testified at trial. When she first saw Brown and C.D. in the elevator, C.D. had her hands over her face and Brown had his arms around her. After the three left the elevator, C.D. asked Briones if she was driving and asked for a ride home. C.D. sounded nervous. Brown said, "Aren't I supposed to take you home?" Brown seemed indifferent and aloof. Under the guise of forgetting something, Briones took C.D. back into the elevator. Once they left the elevator, C.D. began to cry and said she had been raped. Briones took her inside and called the police.

DNA profiles obtained from the perianal and external vaginal swabs of C.D. matched Brown's DNA profile.

D. Britney C. (Counts 7-8)

Britney C. could not be located at the time of trial, so her testimony from the preliminary hearing was read into the record. Britney C. testified that on August 20, 2010, Brown came over to her apartment for the agreed-upon purpose of having sex with her for money. Britney C. went to her bathroom to brush her teeth. Brown followed her into the bathroom and repeatedly hit her in the face with a vase, causing a bleeding wound to her forehead. As he hit her he demanded her money. Britney C. attempted to fight back and get out of the bathroom, but she was unable to push past Brown. Holding a broken glass as if he were going to stab her, Brown took Britney C. from the bathroom to a pallet on the floor. He told her he wanted oral copulation and sexual intercourse. Britney C. orally copulated him while he held the broken glass. Brown then placed his penis in her vagina. After Brown finished the sexual act, he put Britney C. in her closet and barricaded the closet with a couch.

Britney C. escaped, called 911, and was taken to the hospital, where she received stitches for the injury on her head and was given a sexual assault examination. Britney C. had sustained the injury to her forehead from being hit by the vase, injuries to her right shin, marks on her left forearm, and a cut and bleeding lip. Other lacerations and abrasions were documented in the sexual assault examination. The DNA profile taken from the external vaginal swab of Britney C. matched Brown's DNA profile.

Later Britney C. discovered that various electronic devices were missing from her home, including her phone. Pings from that phone led to the area of Brown's apartment. Brown was with a companion when the police found him, and the companion had Britney C.'s phone. Brown made a number of incriminating comments to his companion in the police car.

Police searched Brown's apartment and recovered a shirt, underwear, and blue jeans that appeared to have blood on them. Photographs of Britney C. and text messages between Brown and Britney C. were found on Brown's phone.

E. Susan P. (Uncharged Acts)

The trial court permitted Susan P. to testify about a prior uncharged act of sexual assault under Evidence Code section 1108. Susan P. testified that in August 1993, she found Brown standing in the foyer of her apartment. She attempted to flee, but Brown grabbed her around the waist and began to carry her into a bedroom. Susan P. fought back, bracing her foot against the bedroom door and punching Brown. He hit her in the head with a brass bowl but she continued to struggle. Brown tried to remove Susan P.'s clothes. He forced his hand inside her jeans and touched her vaginal area through her underwear. He also pulled off her brassiere. Susan P. screamed for help, making Brown angry. He grabbed her by the hair, dragged her across the floor into the master bedroom and into the closet, and closed the door behind them. He told Susan P. that he had a knife and to stop fighting him, but she did not stop struggling. Brown put his hands on her breasts, lay on top of her, and began to pull down his shorts. Susan P. told him he could have her money and her car, and that he did not have to "do this," but he told her, "Shut up, bitch. I don't want your money." Brown stopped his assault on her when they heard someone shouting nearby. He took Susan P.'s car keys and fled.

F. Brown's Testimony

Brown testified in his own defense. He testified that he had met M.Y. in person after they connected on a dating website. He stated that he hit M.Y. when he discovered, as they were engaging in consensual sexual conduct, that she was transgender. According to Brown, after he hit M.Y. she then persuaded him to have sex with her.

Brown testified that he had solicited L.T. for sex, and that after they had intercourse he refused to pay her because he was not pleased with her performance. L.T., he said, was angry at not being paid, and he pulled her from his car as she was "giving [him] a fit." He denied ever displaying a knife. He testified that he did not find her phones until the following day.

With respect to C.D., Brown testified that they had agreed to spend some time together before he drove her to her grandmother's home. C.D.

willingly drank an alcoholic beverage and smoked marijuana. C.D. asked him if he wanted to have sex. They did so, and then they left the apartment so that he could drive her to her grandmother's home. Brown said that when they encountered Briones at the elevator, C.D. said that she knew Briones and that Briones would take her home. Brown was shocked but not upset by C.D.'s departure. He never saw her again.

Brown testified that he had consensual sex with Britney C. and that they had each engaged in oral copulation. Afterwards, Britney C. became physically aggressive when he asked for the return of money he had previously lent to her. He described Britney C. as "getting in [his] face" repeatedly, at which time he pushed her face and she bit his hand. He hit her with his fist, but she did not let go, so he grabbed a vase and hit her with it. This caused Britney C. to let go of his hand and fall to the ground. Brown claimed that he attempted to help Britney to her feet but that she continued to try to fight him. He pushed her again, she fell into the bathroom, and they struggled some more. During the altercation Brown got blood on his clothes. Eventually, Brown said, Britney C. stopped fighting and told him to take her video game system as repayment for the loan. Brown took the game system, a digital music player, and Britney C.'s phone, as well as a backpack to carry the items.

Brown described the incident with Susan P. as a robbery and claimed he neither sexually assaulted her nor intended to sexually assault her.

#### G. Verdict and Sentence

The jury found Brown guilty on all counts pertaining to M.Y., L.T., and C.D., and not guilty of the counts involving Britney C. The court declined to strike any of his prior strikes. For the four sexual offenses of which Brown was convicted, the court sentenced him to four consecutive 25 years to life sentences. The court sentenced Brown to another 25 years to life term for the robbery, but specified that this sentence would run concurrently with the other sentences. With an additional ten-year term for two sentencing enhancements, Brown's aggregate sentence was 110 years to life. Brown appeals.

## DISCUSSION

### I. Admission of Uncharged Acts

“When a defendant is accused of a sex offense, Evidence Code section 1108 permits the court to admit evidence of the defendant’s commission of other sex offenses, thus allowing the jury to learn of the defendant’s possible disposition to commit sex crimes.” (*People v. Cordova* (2015) 62 Cal.4th 104, 132.) Brown contends that the trial court abused its discretion in admitting evidence of the attack on Susan P. because the evidence was more prejudicial than probative, and that he was unable to receive a fair trial as a result of the admission of the evidence. We review the admission of this evidence for an abuse of discretion. (*Ibid.*)

The trial court did not abuse its discretion. The evidence was significantly probative: in each incident, Brown attacked his victim in a secluded location and threatened her; he used or threatened to use a weapon, or threatened to kill the victim. The attack on Susan P. was strikingly similar to the incident involving Britney C.: although Brown obtained access to the residence in different ways, in both attacks the evidence showed that Brown attacked his victim while she was alone in her home, hit her in the head with a blunt object he found in the home, and continued to assault her despite her resistance. The uncharged acts evidence also was not especially prejudicial. The attack on Susan P. was no more inflammatory than the offenses that were charged here. Her testimony was a relatively brief and matter-of-fact description of her successful attempt to fight and to scare off Brown before he could do more than overpower her and touch her vaginal area, while the charged incidents involved not only violence but also rape, and forced anal and oral copulation.

Brown, however, argues that the incident with Susan P. was “much more egregious in its violence than the current offenses, and thus, much more inflammatory than the current charges,” He contends that the rapes of a prostitute, a person met through a dating site, and a person walking on the street at night were not alleged to have “any indicia of violence . . . beyond the injury to [M.Y.]’s mouth which appellant attributed to his initial shock at learning that she was transgender,” and that they were thus very different



from the evidence that Brown committed a “predatory sexual assault on [Susan P.] in the privacy and presumptive security of her residence” with a concomitant robbery. Brown ignores the fact that he was tried for sexual offenses against not three but four victims. As we have discussed above, Brown was charged with and tried for violently sexually assaulting Britney C. in her residence in a manner similar to the Susan P. incident. While the jury ultimately did not convict Brown of the charges concerning Britney C., this evidence was presented at trial, and the pronounced similarity of the attacks on Susan P. and Britney C. therefore was properly considered in the determination of whether the evidence was more prejudicial than probative. The evidence that Brown committed a “predatory sexual assault on [Susan P.] in the privacy and presumptive security of her residence,” as well as a concomitant robbery, was no more inflammatory or egregiously violent than the evidence that Brown robbed Britney C. and committed a predatory sexual assault against her in the privacy and presumptive security of her residence.<sup>3</sup>

Next, Brown acknowledges that the jury was informed that he was convicted of carjacking on April 25, 1996, and that he had no prior sex offense convictions, but he complains that the jury “was not directly informed that appellant had not been convicted of a non-sex offense in the prior case,” in which he pleaded guilty to robbery pursuant to a plea bargain. The cases on which Brown relies, *People v. Mullens* (2004) 119 Cal.App.4th 648, *People v. Griffin* (1967) 66 Cal.2d 459, and *People v. Poletti* (2015) 240 Cal.App.4th 1191, stand for the principle that when propensity evidence is admitted to show that a defendant committed an uncharged sex crime, a trial court cannot exclude evidence that the defendant was acquitted of the uncharged sexual offense. These cases are inapposite because, as Brown acknowledges, he was not acquitted of any sexual offenses against Susan P. Moreover, other than citing the above cases, Brown provides no authority or argument supporting his view that the jury should have been informed of the dismissal

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<sup>3</sup> As to the other crimes, Brown’s attempt to minimize the offenses and to justify the crimes against the victims by reference to their personal characteristics and circumstances is not only unsupported by the evidence, but also irrelevant to the issues.

of the sexual assault charge as part of the plea bargain. On appeal, a party must present argument and legal authority on each point raised; if the party fails to do so, the reviewing court may treat the point as waived and pass on it without consideration. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Finally, Brown has not demonstrated that he requested but was refused the opportunity to present evidence that the charged sexual offense against Susan P. was dismissed in exchange for a guilty plea to robbery. (*Metzenbaum v. Metzenbaum* (1950) 96 Cal.App.2d 197, 199 [“an appellate court cannot be expected to search through a voluminous record to discover evidence on a point raised by appellant when his brief makes no reference to the pages where the evidence on the point can be found in the record”].) Brown has not demonstrated any error in the admission of the uncharged acts evidence concerning Susan P.

## **II. Constitutionality of Evidence Code Section 1108**

Brown contends that Evidence Code section 1108, under which the prosecutor was permitted to introduce evidence of his prior sexual crime, is unconstitutional. He acknowledges that in *People v. Falsetta* (1999) 21 Cal.4th 903 (*Falsetta*), our Supreme Court rejected federal due process challenges to Evidence Code section 1108. In *Falsetta*, our Supreme Court found that the introduction of evidence of a defendant’s commission of a prior sexual offense in a current prosecution does not violate due process because strict limitations are placed on the introduction of such evidence, including the trial court’s balancing of its probative value and prejudice. (*Id.* at pp. 917-920.) Although Brown argues otherwise, this court is obligated to follow the rulings of the California Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

The *Falsetta* court cited with approval *People v. Fitch* (1997) 55 Cal.App.4th 172, 184 (*Fitch*), which rejected an equal protection challenge to Evidence Code section 1108 on the basis that it treats those accused of sex offenses differently from those accused of other crimes. The *Fitch* court held that Evidence Code section 1108, which creates two classifications of accused or convicted defendants, is subject to rational basis scrutiny. (*Ibid.*) The court concluded that Evidence Code section 1108 is supported by a rational

basis because “[t]he Legislature determined that the nature of sex offenses, both their seriousness and their secretive commission which results in trials that are primarily credibility contests, justified the admission of relevant evidence of a defendant’s commission of other sex offenses.” (*Ibid.*) While the *Falsetta* court announced no specific ruling concerning equal protection, it noted that the *Fitch* court had rejected an equal protection challenge to the statute and quoted language from the *Fitch* decision’s equal protection analysis. (*Falsetta, supra*, 21 Cal.4th at p. 918.)

We follow *Falsetta* and *Fitch* and reject Brown’s constitutional challenges to Evidence Code section 1108.

### **III. Sentencing**

Brown argues that the trial court erred in sentencing him to consecutive terms for two offenses against a single victim under the “One Strike” law (§ 667.61). Although the trial court failed to check the box on the abstract of judgment to indicate that the sentence was imposed pursuant to the Three Strikes law, it is clear from the transcript of the sentencing hearing and from the sentence itself that Brown was sentenced under that sentencing scheme. As Brown was not sentenced under the One Strike law, his argument that his sentence violated the provisions of that law is not well-taken.

## DISPOSITION

The clerk of the superior court is ordered to amend the abstract of judgment to reflect under box 8 that Brown was sentenced under the Three Strikes law and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

KEENY, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.